## Jurisdictional Statement

The Order sought to be reviewed was entered by the Appellate Court of Illinois, First District, First Division, on June 20, 2005. (App. D, p. App. 4) The Appellate Court of Illinois, First District, denied petitioners' Petition For Rehearing on August 2, 2005. (App. C, p. App. 3) The Illinois Supreme Court denied leave to appeal as to each petitioner, on December 1, 2005. (Martinez, App. A, p. App. 1; Bomkamp, App. B, p. App. 2)

Jurisdiction of this Court is invoked under 28 U.S.C. § 1257.

## Constitutional Provisions Involved

The federal constitutional provisions involved are the Due Process Clause and the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution. (App. E, p. App. 32)

## STATEMENT OF THE CASE

### Statement of Facts

Oscar Martinez, I n Bomkamp, and Jeffrey Iniguez were jointly-indicted in the Circuit Court of Cook County, Illinois, for the December 17, 1998 aggravated battery and first degree murder of Walter Warlyn, Jr. (App. 35) They were jointly-tried before a single jury. (App. 35) They were each found guilty by that jury, and sentenced to prison terms. (App. 4-5, 45)

They each filed separate notices of appeal to the Illinois Appellate Court, First District. (App. 4, 34) They were each assigned separate appeal case numbers in the Appellate Court; Iniguez: 02-1182; Bomkamp: 02-2299; and Martinez: 02-2300. (App. 4, 34) For reasons unknown, the Appellate Court administratively consolidated the appeals of Martinez and Bomkamp, only. (App. 4)

All three of these defendants filed separate Briefs in the Appellate Court raising numerous issues in these direct appeals. (App. 4-31, 34-57) They each raised the issue that the admission of prejudicial gang-related evidence deprived them of a fair trial. (App. 15-17, 35, 51-53) Iniguez raised a jury instruction issue as plain error, that Martinez and Bomkamp did not raise. (App. 4-31, 35, 43-47)

On June 20, 2005 the First Division of the First District Appellate Court, Cahill, P.J., with McBride and O'Malley, JJ., concurring; issued an unpublished Order affirming the convictions and sentences of Martinez and Bomkamp. (App. 4-31)

For Martinez and Bomkamp, in this decision, the Appellate Court held that the admission of gang evidence did not deny them a fair trial. (App. 15-17) The Appellate Court reasoned here that there was evidence in the case that linked these two defendants to the State's theory that the victim's murder was motivated by gang affiliation. (App. 17) The Appellate Court concluded that the fact that Martinez and Bomkamp were "not themselves present" during an earlier fight between two particular gangs, did not "defeat" the State's theory of motive. (App. 17)

Martinez and Bomkamp unsuccessfully petitioned for rehearing, and then each filed separate Petitions for Leave to Appeal in the Illinois Supreme Court. (App. 1-3)

While those petitions for leave to appeal were pending, on September 7, 2005, the Second Division of the First District Appellate Court, Wolfson and Burke, JJ., with Cahill, P.J. dissenting; issued an unpublished Order later published as an Opinion on October 18, 2005 on the motion of Iniguez – reversing and remanding for a new trial

on the same prejudicial gang-related evidence issue rejected by the Appellate Court for co-defendants Martinez and Bomkamp. (App. 34-57, esp. at 51-53)

The Appellate Court also included as grounds for Iniguez' reversal, the jury instruction issue not raised by Martinez and Bomkamp. (App. 43-47)

Concerning the "extensive amount of gang evidence" that was allowed at trial over objection, for co-defendant Iniguez the Appellate Court stated:

> "there was no evidence the defendant was aware of the so-called motivating fact – a street gang fight six months before the killing. [citation omitted.] The effect, if not the purpose, of the gang evidence was to stir the emotions of the jury. Probative value was virtually nil. We find the admission of this evidence was reversible error." (App. 53)

* * *

Martinez and Bomkamp were thereafter granted leave by the Illinois Supreme Court to amend and supplement their pending Petitions for Leave to Appeal, to contend that the Appellate

Court's different treatment of similarly-situated, jointly-tried defendants on direct appeal, re the same (gang evidence) issue, without rational basis, violates due process of law and equal protection of the laws, per the U.S. Const., amend. XIV. (Page 9 of each Amended Supplement to Petition for Leave to Appeal; App. 1, 2)

On December 1, 2005 the Illinois Supreme Court, without comment, issued Orders denying leave to appeal for Martinez and Bomkamp. (App. 1, 2)

* * *

Martinez, Bomkamp, and Iniguez were all three indicted together and convicted by the same jury on the same evidence in a joint trial. (App. 4-31, 34-57) None testified at trial; none was present at a prior gang fight that was the basis for the State presenting gang motive evidence; and the gang evidence admitted as to all three was the same. (App. 4-31, 34-57)

Iniguez is in the Cook County Jail awaiting retrial, at which retrial will be barred the same prejudicial gang evidence, that Martinez and Bomkamp remain imprisoned upon. (App. 4-31, 34-57)

## Raising the Federal Question

Petitioners raised the federal question in the Illinois Supreme Court. The question – that the Appellate Court's different treatment of similarly-situated, jointly-tried defendants on direct appeal, *re* the same (gang evidence) issue, without rational basis, violates due process of law and equal protection of the laws, per U.S. Const., amend. XIV – was raised at p. 9 of each petitioner's Amended Supplement to Petition for Leave to Appeal. Leave to Appeal was denied. (Apps. A and B)

This question did not exist until after the Appellate Court affirmed petitioners' convictions and sentences (App. D), yet reversed and remanded in co-defendant Iniguez's case (App. G) – albeit all three were indicted together and convicted by the same jury on the same evidence in a joint trial; none testified; none was present at a prior gang fight that was the basis for the State presenting gang motive evidence; and the gang evidence admitted as to all three was the same. This did not occur until after petitioners had filed their Petitions for Leave to Appeal in the Supreme Court of Illinois. That Court allowed them to amend and supplement their pending PLA's to include the federal question; so petitioners raised it at their earliest opportunity after it came to exist.

## REASONS FOR GRANTING CERTIORARI

1. Illinois has laid "an unequal hand on those who have committed intrinsically the same quality of offense." Skinner v. Oklahoma, 316 U.S. 535, 541 (1942). By doing so, "it has made as invidious a discrimination as if it had selected a particular race or nationality for oppressive treatment." Ibid.

2. The disparate treatment of petitioners and their codefendant involves a manifest injustice. Fundamental fairness requires that like cases be treated alike. (U.S. Const. Amend. 14; App. E)

3. The failure of Illinois to grant the same relief for petitioners, or give a principled reason for acting differently in the two appellate decisions (Petitioners, App. D; co-defendant Iniguez, App. G), violates due process and equal protection of the laws. (App. E) This inconsistency from Illinois constitutes obvious arbitrariness.

4. Allowing Illinois to arbitrarily separate the appeals of jointly-tried and identically situated co-defendants – and then issue diametrically inconsistent appeal verdicts – also undermines the policy and reasons for favoring joint trials.

5. Petitioners respectfully pray that certiorari be granted to review the judgment below.

## ARGUMENT

In Illinois, "The judicial power is vested in a Supreme Court, an Appellate Court and Circuit Courts." Ill. Const. of 1970, art. VI, § 1. "Although the appellate court is divided into five districts for purposes of election (Ill. Const. 1970, art. VI, § 2), Illinois has but one unitary appellate court." People v. Ortiz, 196 Ill.2d 236, 752 N.E.2d 410, 423 (2001). While there may be no Constitutional right to direct appeal, if a State provides for such appellate review, this Court has left no room for doubt that those courts of review must adhere to "the demands of the Due Process and Equal Protection Clauses of the Constitution." Evitts v. Lucey, 469 U.S. 387, 393 (1985).[1]

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[1] "Almost a century ago, the Court held that the Constitution does not require States to grant appeals as of right to criminal defendants seeking to review alleged trial court errors. [Citation omitted.] Nonetheless, if a State has created appellate courts as 'an integral part of the . . . system for finally adjudicating the guilt or innocence of a defendant,' Griffin v. Illinois, 351 U.S. [12], at 18, 76 S.Ct. [585], at 590 [(1956)], the procedures used in deciding appeals must comport with the demands of the Due Process and Equal Protection Clauses of the Constitution." Evitts v. Lucey, supra.

"Fundamental fairness requires that like cases be treated alike." Walter v. U.S., 969 F.2d 814, 817 (9 Cir. 1992); citing: Griffith v. Kentucky, 479 U.S. 314, 322-24 (1987). "It is a principle requiring particularly strong adherence when the two cases are not merely factually alike or even factually identical, but arise from the same facts." Walter, supra, at 817.

The Ninth Circuit in Walter noted the "necessity of treating identically-situated co-defendants identically." Walter, supra (Disparate treatment of movant and codefendants as to their identical speedy trial arguments involved manifest injustice). "When the federal courts have treated differently two identically-situated defendants, the way must be open to the federal courts to correct their error." Walter, supra; citing: Davis v. United States, 417 U.S. 333, 346-47 (1974).

"Other circuits agree that the federal interest in compliance with appellate procedures is not adequate to warrant treating co-defendants differently on appeal." Walter, supra; citing: U.S. v. Rivera Pedin, 861 F.2d 1522, 1526 n.9 (11 Cir. 1988); U.S. v. Gray, 626 F.2d 494, 497 (5 Cir.), *cert. denied sub nom.*, Fennell v. U.S., 449 U.S. 1038 (1980), *cert. denied*, 449 U.S. 1091 (1981), *cert. denied sub nom.*, Barker v. U.S., 450 U.S. 919 (1981); U.S. v. Anderson, 584 F.2d 849, 853 (6 Cir. 1978).

In Skinner v. Oklahoma, 316 U.S. 535, 541 (1942), this Court reversed a judgment ordering a defendant sterilized under a State statute authorizing sterilization of those convicted of certain enumerated offenses. In Skinner, this Court recognized and applied "the constitutional guaranty of just and equal laws" (316 U.S. at 541):

> "The guaranty of 'equal protection of the laws is a pledge of the protection of equal laws.' Yick Wo v. Hopkins, 118 U.S. 356, 369, 6 S.Ct. 1064, 1070, 30 L.Ed. 220 [(1886)]. When the law lays an unequal hand on those who have committed intrinsically the same quality of offense and sterilizes one and not the other, it has made as invidious a discrimination as if it had selected a particular race or nationality for oppressive treatment. Yick Wo v. Hopkins, supra; [State of Missouri ex rel.] Gaines v. Canada, 305 U.S. 337, 59 S.Ct. 232, 83 L.Ed. 208 [(1938)]." Ibid.

The Illinois Appellate Court (App. D; see also App. G), and Illinois Supreme Court by denying discretionary review (Apps. A & B), have offered no explanation for treating these identically-situated co-defendants differently on appeal. There appears to be no explanation, but for the different whims of

individual Appellate Justices. As in Yick Wo, this arbitrariness, without explanation or accountability, violates due process and equal protection:

> ". . . [I]t would be a sufficient answer for them to say that the law had conferred upon them authority to withhold their assent without reason and without responsibility. The power given to them is not confided to their discretion in the legal sense of that term, but is granted to their mere will. It is purely arbitrary, and acknowledges neither guidance nor restraint." Yick Wo, 118 U.S. at 366-67.

In U.S. v. Johnson, 457 U.S. 537 (1982), on the way to its holding that the Payton rule must apply to all cases pending on direct review, this Court embraced the due process/equal protection principle long espoused by Justice Harlan:

> " 'When another similarly situated defendant comes before us, *we must grant the same relief or give a principled reason for acting differently*. We depart from this basic judicial tradition when we simply pick and choose from among similarly situated defendants those who alone will receive the benefit of a 'new' rule of constitutional law.' " (Emphasis added.) U.S. v. Johnson, 457 U.S. at 548,

quoting from Justice Harlan's dissent in Desist v. U.S., 394 U.S. 244, 258-50 (1969).

GRANT THE SAME RELIEF OR GIVE A PRINCIPLED REASON FOR ACTING DIFFERENTLY. The Illinois Appellate Court has given no principled nor rational reason for acting differently in the cases of Iniguez on the one hand, and Martinez and Bomkamp on the other. The Illinois Supreme Court, confronted with the clear conflict and inequity of the two decisions (App. F, p. App. 33; issue presented in amended supplements to Petitions for Leave to Appeal), refused to intervene. (Apps. A & B)

In U.S. v. Maybury, 274 F.2d 899, 904-06 (2 Cir. 1960), the court held that different outcomes in a bench trial was irrationally inconsistent. The Maybury court reasoned that the fact that the joint trial was a bench trial, and not a jury trial, took the case out of the general rule that appellate courts will not review inconsistent verdicts. Ibid.

In Harris v. Rivera, 454 U.S. 339, 342-43 (1981), this Court questioned the Maybury decision, upholding disparate bench trial verdicts for three co-defendants in a state court. This Court stated though in Rivera, that "inconsistency nevertheless might constitute evidence of arbitrariness that would undermine confidence in the quality of the judge's conclusion." Ibid. This

Court in Harris, went on to give several reasons why the different bench trial results may have happened rationally. Ibid.

There are no reasons at bar why the different results may have happened rationally. This inconsistency from the Illinois Appellate Court and Supreme Court, constitutes obvious evidence of arbitrariness, that undermines confidence in the quality of the conclusion.

We have the bizarre outcome here of Iniguez going to retrial, at which retrial will be barred the same prejudicial gang evidence, that Martinez and Bomkamp remain imprisoned upon.

It is a "manifest injustice" to allow the convictions of Martinez and Bomkamp to stand, while ordering a new trial for Iniguez based upon error in admitting the same evidence, at the same trial. United States v. Anderson, 584 F.2d 849, 853 (6 Cir. 1978) ("manifest injustice" to allow conviction of one codefendant to stand while ordering new trial for other codefendant). The principal "that like cases be treated alike, seems to fall within the spirit, if not the letter, of the law of the case doctrine." Bunker v. Jabe, No. 92-1406 (6 Cir. unpub. opin., 6/10/93), 1993 U.S. App. LEXIS 14453, *pet. for rehearing en banc denied* 8/26/93, *cert. denied sub nom.*, Jabe v. Bunker, 510 U.S. 1025 (1993)(codefendant tried by same jury entitled to

new trial also, notwithstanding new rule of retroactivity; finding federal constitutional violation and granting habeas to State prisoner). (This opinion is set out as App. H, p. App. 58.)

These decisions follow the Constitutional standards and traditions set by this Court for treating similarly situated defendants the same.

In Teague v. Lane, 489 U.S. 288 (1989), this Court expressly accepted this aspect of Justice Harlan's approach, recognizing it had done the same in Griffith v. Kentucky:

> "In Griffith v. Kentucky, 479 U.S. 314, 107 S.Ct. 708, 93 L.Ed.2d 649 (1987), we rejected as unprincipled and inequitable the *Linkletter* standard for cases pending on direct review at the time a new rule is announced, and adopted the first part of the retroactivity approach advocated by Justice Harlan. We agreed with Justice Harlan that 'failure to apply a newly declared constitutional rule to criminal cases pending on direct review violates basic norms of constitutional adjudication.' 479 U.S., at 322, 107 S.Ct., at 713." Teague v. Lane, 489 U.S. at 304.

Expressly agreeing with this view, the Teague v. Lane Court continued:

> " 'The integrity of judicial review' requires the application of the new rule to 'all similar cases pending on direct review.' *Id.*, at 323, 107 S. Ct., at 713." Ibid.

Moreover (echoing Justice Harlan's language), in discussing what it had done in Griffith, this Court in Teague v. Lane stated:

> "[B]ecause 'selective application of new rules violates the principle of treating similarly situated defendants the same,' we refused to continue to tolerate the inequity that resulted from not applying new rules retroactively to defendants whose cases had not yet become final. *Id.*, at 323-324, 107 S.Ct., at 713-714 (citing *Desist, supra*, 394 U.S., at 258-59, 89 S.Ct., at 1038-1039 (Harlan, J., dissenting))." 489 U.S. at 304.

* * *

Permitting Illinois courts of review to rule by coin-flip for separate, but identically-situated defendants, also violates the policy favoring joint trials in criminal cases (as occurred here).

In Richardson v. Marsh, 481 U.S. 200, 205 (1987), this Court stated that "[j]oint trials play a vital role in the criminal justice system, accounting

for almost one-third of federal criminal trials in the past five years." Id. at 209. This Court explained further:

> "Joint trials generally **serve the interests of justice** *by avoiding inconsistent verdicts* and enabling more accurate assessment of relative culpability – advantages which sometimes operate to the defendant's benefit. Even apart from these tactical considerations joint trials generally **serve the interests of justice** *by avoiding the scandal and inequity of inconsistent verdicts*." Id. at 210. (Emphases added.)

In *accord*, is U.S. v. Zafiro, 506 U.S. 534, 537 (1993), where this Court stated that "joint trials play a vital role in the criminal justice system" by both promoting efficiency and "avoiding the scandal and inequity of inconsistent verdicts." Ibid. (Emphasis added.)

Allowing Illinois to separate the appeals of jointly-tried defendants, and then arbitrarily and without any principled reasons – issue diametrically inconsistent appeal verdicts – undermines the policy and reasons for favoring joint trials.

## CONCLUSION

Illinois has laid "an unequal hand on those who have committed intrinsically the same quality of offense." Skinner, supra, 316 U.S. at 541. By doing so, "it has made as invidious a discrimination as if it had selected a particular race or nationality for oppressive treatment." Ibid.

The disparate treatment of petitioners and their codefendant involves a manifest injustice. Fundamental fairness requires that like cases be treated alike. (U.S. Const. Amend. 14; App. E)

The failure of Illinois to grant the same relief for petitioners, or give a principled reason for acting differently in the two appellate decisions (Petitioners, App. D; co-defendant Iniguez, App. G), violates due process and equal protection of the laws. (App. E) This inconsistency from Illinois constitutes obvious arbitrariness.

Allowing Illinois to arbitrarily separate the appeals of jointly-tried and identically situated co-defendants – and then issue diametrically inconsistent appeal verdicts – also undermines the policy and reasons for favoring joint trials.

Petitioners respectfully pray that certiorari be granted to review the judgment below.

Respectfully submitted,

_____

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Ian Bomkamp

_____

STEVEN D. PICK
Attorney for Petitioner
Oscar Martinez

Supreme Court, U.S.
FILED
05113 2006
OFFICE OF THE CLERK

No.

IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 2005

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OSCAR MARTINEZ and IAN BOMKAMP,
Petitioners,

vs.

PEOPLE OF THE STATE OF ILLINOIS,
Respondent.

---

Petition for Writ of Certiorari to the
Illinois Appellate Court, First District

---

SEPARATE VOLUME APPENDIX
PURSUANT TO SUPREME COURT RULE 14.1.(i)
RELATIVE TO:
PETITION FOR WRIT OF CERTIORARI

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**TABLE OF CONTENTS TO SEPARATE VOLUME APPENDIX PURSUANT TO SUPREME COURT RULE 14.1.(i)**

*Page of App.*

1. The order(s) entered in conjunction with the judgment(s) sought to be reviewed (Supreme Court Rule 14.1(i)(i)) –

APPENDIX A: Order of the Supreme Court of Illinois, entered December 1, 2005, People v. Oscar Martinez et al. (Oscar Martinez, petitioner), No. 101183, denying petition for leave to appeal. .....App. 1

APPENDIX B: Order of the Supreme Court of Illinois, entered December 1, 2005, People v. Oscar Martinez et al. (Ian Bomkamp, petitioner), No. 101177, denying petition for leave to appeal. .....App. 2

2. The order on rehearing (Supreme Court Rule 14.1(i)(iii)) –

APPENDIX C: Order of the Appellate Court of Illinois, First Judicial District, entered August 2, 2005, People v. Oscar Martinez and Ian Bomkamp, Nos. 1-02-2299 & 1-02-2300, denying petitions for rehearing.....App. 3

3. The judgment sought to be reviewed if the date of its entry is different from the date of the order required in sub subparagraph (i) of this subparagraph (Supreme Court Rule 14.1(i)(iv)) –

APPENDIX D: Order of the Appellate Court of Illinois, First Judicial District, First Division, entered June 20, 2005, People v. Oscar Martinez and Ian Bomkamp, Nos. 1-02-2299 and 1-02-2300, Consolidated, affirming convictions and sentences of Martinez and Bomkamp (i.e., affirming, as to these defendants, the judgment of the Circuit Court of Cook County, No. 99 CR 12134).....App. 4

4. Material required by subparagraph 1(f) (Supreme Court Rule 14.1(i)(v)) –

APPENDIX E: The Due Process and Equal Protection Clauses of the Fourteenth Amendment to the United States Constitution.....App. 31

5. Material required by subparagraph 1(g)(i) (Supreme Court Rule 14.1(i)(v)) –

APPENDIX F: Raising the Federal Question. .....App. 32

**6. Other material the petitioners believe essential to understand the petition (Supreme Court Rule 14.1(i)(vi)) –**

**APPENDIX G: Order of the Appellate Court of Illinois, First Judicial District, Second Division, dated September 7, 2005, ordered published as an Opinion *[on motion of appellant Iniguez]* October 18, 2005, People v. Jeff Iniguez, No. 1-02-1182, reversing and remanding judgment of the Circuit Court of Cook County, No. 99 CR 12134*.....App. 33**

**APPENDIX H: David A. Bunker, Petitioner-Appellant, v. John Jabe, Warden, et al., Respondents, No. 92-1406 (6 Cir., June 10, 1993) (Not Recommended For Publication), 1993 U.S. App. LEXIS 14453, reported as Table Case at 995 F.2d 1066, 1993 U.S. App. LEXIS 21061.....App. 58**

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* Iniguez, Martinez, and Bomkamp were jointly tried. Circuit Court of Cook County, case No. 99 CR 12134 – reversed and remanded as to Jeff Iniguez – is the same judgment that was affirmed as to Petitioners by a different division of the same appellate court in Petitioners' (Martinez' and Bomkamp's) appeal; App. D, pp. App. 4-30.

# APPENDICES

APPENDIX A

101183 SUPREME COURT OF ILLINOIS
CLERK OF THE COURT
SUPREME COURT BUILDING
SPRINGFIELD, ILLINOIS 62701
(217) 782-2035

December 1, 2005

Mr. Steven D. Pick
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No. 101183 People State of Illinois, respondent, v. Oscar Martinez et al. (Oscar Martinez, petitioner). Leave to appeal, Appellate Court, First District.

The Supreme Court today DENIED the petition for leave to appeal in the above entitled cause.

The mandate of this Court will issue to the Appellate Court on December 23, 2005.

APPENDIX B

101177 SUPREME COURT OF ILLINOIS
CLERK OF THE COURT
SUPREME COURT BUILDING
SPRINGFIELD, ILLINOIS 62701
(217) 782-2035

December 1, 2005

Mr. Dennis Doherty
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222 North LaSalle St.
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Chicago, IL 60601

No. 101177 People State of Illinois, respondent, v. Oscar Martinez et al. (Ian Bomkamp, petitioner). Leave to appeal, Appellate Court, First District.

The Supreme Court today DENIED the petition for leave to appeal in the above entitled cause.

The mandate of this Court will issue to the Appellate Court on December 23, 2005.

APPENDIX C

IN THE APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

| | | |
|---|---|---|
| THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, | ) | |
| v. | ) | Nos. 1-02-2299 1-02-2300 |
| OSCAR MARTINEZ and IAN BOMKAMP, Defendants-Appellants. | ) | |

ORDER

This cause coming to be heard on the Petitions for Rehearing of Defendants-Appellants, OSCAR MARTINEZ and IAN BOMKAMP, and the Court being fully advised in the premises;

IT IS HEREBY ORDERED that the Petitions For Rehearing be DENIED.

Dated at Chicago, Illinois, this __ day of __, 2005.

*[Signatures]* Kahill
Justice

ORDER ENTERED
AUG 02 2005
APPELLATE COURT, FIRST DISTRICT

M. S. McBride
Justice

Denise M. O'Malley
Justice

APPENDIX D

**NOTICE**
**The text of this order may be changed or corrected prior to the time for filing of a Petition for Rehearing or the disposition of the same.**

**FIRST DIVISION**
**June 20, 2005**

Nos. 1-02-2299 and 1-02-2300, Consolidated

**IN THE**
**APPELLATE COURT OF ILLINOIS**
**FIRST JUDICIAL DISTRICT**

| | | |
|---|---|---|
| **THE PEOPLE OF THE STATE OF ILLINOIS,** | ) | **Appeal from the Circuit Court of Cook County.** |
| **Plaintiff-Appellee,** | ) | |
| | ) | **No. 99 CR 12134** |
| **v.** | ) | |
| | ) | **Honorable** |
| **OSCAR MARTINEZ and IAN BOMKAMP,** | ) | **Joseph G. Kazmierski, Jr.,** |
| **Defendants-Appellants.** | ) | **Judge Presiding.** |

ORDER

Defendants Ian Bomkamp and Oscar Martinez were each convicted of first degree murder and aggravated battery and sentenced

to 50 years in prison. Defendants argue in a consolidated appeal: (1) the indictments against them are defective; (2) they were denied a fair trial by the admission of irrelevant and prejudicial gang evidence; (3) their right against self-incrimination was violated by photograph evidence of gang tattoos; (4) they were denied their right to confront witnesses against them; (5) the trial court did not properly instruct the jury; and (6) cumulative error deprived defendants of a fair trial. We affirm. *[p. 2]*

Bomkamp, Martinez and Jeff Iniguez were tried together before a jury for the first degree murder and aggravated battery of Walter Warlyn. The following evidence was presented at their trial.

The victim's father, Roland Warlyn, testified he owned a building in Chicago that housed his catering business. Roland fixed a portion of the building to be used as an apartment for the victim. The victim lived in the apartment and worked at Roland's catering business. Roland was aware that the victim was a heroin user and member of a street gang. On December 16, 1998, Roland gave the victim permission to borrow a white Ford catering van to go out for the evening. When Roland arrived at work the following morning, he noticed the lights in the building had been left on and there were fast food cups lying on the floor. The victim did not show up for work. Roland